



POLICE DEPARTMENT

October 22, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Nicholas Horun
Tax Registry No. 928499
81 Precinct
Disciplinary Case No. 84232/08

The above-named member of the Department appeared before me on May 27 and July 7, 2010, charged with the following:

1. Said Police Officer Nicholas Horun, while assigned to the 81st Precinct, on January 13, 2007, at or about 0206 hours, in the vicinity of 300 Bainbridge Street, Kings County, did fail to provide his name and shield number when requested by an individual known to the Department.

P.G. 203-09, Page 1, Paragraph 1 – GENERAL REGULATIONS

The Department was represented by David Bernstein, Esq. and Adam Sheldon, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

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SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Cassandra Stevenson and Joseph Searles as witnesses and entered Ebony McBride's Civilian Complaint Review Board (CCRB) statement into evidence.

Cassandra Stevenson

Stevenson currently resides at 300 Bainbridge Street in Brooklyn. Her son, Shawn, lives in the neighboring apartment building. While looking out her bedroom window at 2:00 a.m. on January 13, 2007, she observed Shawn outside on the street yelling. It was cold outside, but Shawn had his pants pulled down and his shirt off. Stevenson called 911 because of Shawn's unusual behavior. She then walked downstairs to meet the responding emergency medical technicians (EMTs). Because Shawn was so out of control, the EMTs (subsequently identified as Joseph Searles and Ebony McBride) called for police assistance.

Two uniformed officers, a male and a female (subsequently identified as the Respondent and Police Officer Castaneda), arrived at the scene and asked Shawn if he would speak to them. Shawn replied, "What the fuck you want with me? I didn't do a fucking thing." At that point, the Respondent threw Shawn down, put his hand behind his back, and started to hit him on the side of his face.

When the Respondent stood up, Stevenson asked to see his identification. She explained that she wanted to know the Respondent's identity because he had just finished beating up Shawn. According to Stevenson, when she asked for the identification, the

Respondent yelled in reference to his shield, "It's right here." Stevenson thought that the Respondent also pointed at his shield, but she was not certain. When Stevenson told the Respondent that she could not see it and asked again for his identification, the Respondent repeated, "It's right here." Stevenson then asked McBride for the Respondent's identification, but McBride did not want to interfere in the situation. Stevenson then walked to the Department vehicle, wrote down the license plate number, went upstairs to her apartment, and reported the Respondent's conduct to the 911 operator. Meanwhile, Shawn was taken to the hospital. Stevenson did not accompany him there. Shawn suffered a swollen eye as a result of the force used by the Respondent.

On cross-examination, Stevenson testified that a civil action was brought against the City, and Shawn received \$45,000. Shawn, who was 35 years old at the time of the incident, had never been in trouble with the police before. Stevenson has, however, requested police assistance more than ten times to deal with Shawn because he was acting erratically and became too hard to handle. Shawn, who takes medication and gets loud when he drinks, has never threatened himself or anyone else, nor does he break things.

According to Stevenson, the Respondent pulled an object out of his pocket and used it to hit Shawn several times on the side of the head. Stevenson could not identify what the object was. The incident occurred near her building courtyard, where there are lights on the sides of the building. When she asked the Respondent for identification, he pointed at his chest, where his shield was located. At the time, Stevenson was standing three feet away from him. At no point did the Respondent cover his shield to hide it from her. Stevenson wears glasses for reading.

Stevenson testified that she recalls making one previous CCRB complaint, but she

could not recall when that complaint was made. She could not recall making CCRB complaints in 1999, 2003, 2004, 2006, or 2007. She never filed a lawsuit before this incident.

[Department's Exhibits (DX) 1 and 1A are the compact disc recording and transcript of the 911 call that Stevenson made on January 13, 2007, to report the Respondent's conduct. She stated in the call that the male police officer driving in Department vehicle number 4182 (the Respondent) hit Shawn beside the forehead with a flashlight. The Respondent subsequently refused to give Stevenson his shield number when she asked for it. DX 2 is a copy of the Respondent's Activity Log from the day of the incident. The log indicates that he was assigned to vehicle number 4182.]

Joseph Searles

Searles has been employed as a New York Fire Department EMT for more than six years. At approximately 2:00 a.m. on January 13, 2007, he and his partner, McBride, responded to the job involving Shawn. When they arrived at the scene and saw Shawn screaming and cursing at anybody who approached him, Searles called for police assistance. When the Respondent and Castaneda arrived, Searles informed them that Shawn was out of control and that he (Searles) could not restrain him. Searles waited by his vehicle while the police officers dealt with Shawn. When it came time for Searles to place Shawn in the ambulance, he heard Stevenson in conversation with the officers. Searles heard Stevenson ask for a shield number. He could not recall the officer's responses, and he could not hear the entire conversation because Shawn was still yelling off and on. The Respondent rode with Shawn to the hospital. Stevenson was not there.

On cross-examination, Searles testified that Stevenson was looking at the Respondent when she asked for the shield number. The Respondent replied by pointing at his chest and saying, "Here's my ID." Searles could not recall if the Respondent did this more than once. The Respondent never tried to hide his shield. Searles never heard the Respondent tell Stevenson that he would not give her his shield number or name. The conversation took place while Stevenson was standing by the ambulance door and the Respondent was inside the ambulance near the door.

On redirect examination, Searles testified that when Stevenson asked the Respondent for his shield number, the Respondent pointed to the area of his chest where his shield was located. Searles was not paying attention to what the Respondent was saying.

Ebony McBride's CCRB Statement¹

DX 3 and 3A are the tape and transcript of McBride's CCRB statement, dated May 16, 2007. McBride stated that when she and Searles arrived at the scene, Shawn was yelling, had a glass bottle in his hand, and looked like he was getting ready to fight with somebody. Shawn seemed angry and like he had been drinking. McBride and Searles called for police assistance and waited in the ambulance. McBride sat on the passenger's side, facing away from the scene. She did not exit the ambulance until after the police had arrived and taken Shawn down to the ground. McBride did not see anything that took place between Shawn and the police officers, but she saw afterwards that Shawn had a contusion on the right side of his forehead and his eye was swollen.

¹ The Department Advocate's Office subpoenaed McBride through her employer, the Fire Department. She was, nevertheless, unwilling to appear at trial.

McBride did not know if Shawn had those injuries before the police interaction, but Shawn said that he had been hit in the eye. At one point, Stevenson asked McBride for the police officers' shield numbers. McBride told her that she could not give out that information.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent, a nine-year member of the Department, is currently assigned to the 81 Precinct. At approximately 2:06 a.m. on January 13, 2007, he and Castaneda responded to a radio run for an emotionally disturbed person at 300 Bainbridge Street. The radio dispatcher informed the officers that, according to the complainant (Stevenson), Shawn was off of his medication, breaking bottles, and being erratic. [Respondent's Exhibit A is a copy of the SPRINT Report for the radio transmission.] The Respondent stated that he had reported to the location at least three or four times before to deal with Shawn. Upon their arrival at the scene that morning, the EMT in the driver's seat of the ambulance (Searles) informed the officers that Shawn had attacked somebody.

The Respondent and Castaneda, who were dressed in uniform, proceeded to approach Shawn. At the time, the Respondent had his flashlight in his hand. The Respondent asked Shawn how he was doing and told him that he needed to go to the hospital. Shawn was angry and cursing, replied that he would not go the hospital, and

muttered to himself about hurting people. When Shawn started to walk away, the Respondent walked around him to block his path and repeated that he needed to go to the hospital.

At that point, an irate Shawn turned toward the Respondent with clenched fists. The Respondent responded by grabbing Shawn's midsection and tackling him to the ground. As the Respondent and Shawn fell to the ground, Shawn flailed his arms in an attempt to get away, striking the Respondent once in the head. While on the ground, Shawn continued to flail his arms. The Respondent ordered Shawn to give him his hands, but Shawn was not compliant. Once the Respondent succeeded in handcuffing Shawn, he stood Shawn up and called his sergeant to the scene. While waiting for the sergeant to arrive, Shawn lost consciousness.

Meanwhile, Stevenson was standing approximately 15 feet away and yelling. She was asking what happened to Shawn and why he was in handcuffs. The Respondent did not give her a response. While the EMTs were placing Shawn in the ambulance, the Respondent noticed that Stevenson was no longer there. The Respondent thought that Stevenson should go to the hospital with Shawn, and he called the radio dispatcher for Stevenson's telephone number. Stevenson did not answer her telephone and never returned to the scene. The Respondent testified that at no point during the incident did Stevenson ask him to identify himself.

On cross-examination, the Respondent testified that Stevenson had never before filed a complaint about him. He was driving Department vehicle number 4182 on the day of the incident. When he first arrived at the scene, Stevenson told the police officers that she was worried about the way Shawn was acting. She also informed the officers that

Shawn was not armed. During his struggle with Shawn, the Respondent accidentally struck Shawn in the head with his flashlight. This is what caused Shawn to lose consciousness. The Respondent reiterated that Stevenson was yelling from 15 feet away, but he did not respond to her.

In a June 20, 2007 interview with the Internal Affairs Bureau (IAB), the Respondent made the following statement:

We put the handcuffs on [Shawn]. . . . EMS came over, put him on the stretcher, and [Stevenson] started yelling about how that was wrong and we shouldn't have done that. . . . I said well, it had to happen, he came at me like that. I had to, you know, try and grab him. I said, if he had just listened to me and given me his hands, you know, we would be okay right now. So then [Stevenson] is, like, I am going to file a complaint. I said okay, but he is coming with us to the hospital first. So she ran to the building. EMS put him in the ambulance and we spent around ten to 15 minutes calling upstairs, having [the] dispatcher call her, tell her to come back down to go to the hospital with us, and eventually she did.

The Respondent testified that he did not recall Stevenson ever asking him for his shield number, nor did he recall hearing Stevenson ask Castaneda for a shield number. He further testified that he rode to the hospital in the ambulance with Shawn, and Stevenson did not accompany them. When asked in his IAB interview about whether he heard Stevenson ask for a shield number, however, he stated, "No, I took a 20 minute ride to the hospital with her in the car, and she didn't ask me once."

On redirect examination, the Respondent explained that at 5:13 a.m. on the day of the incident, he responded to a second job involving an emotionally disturbed person. This job, which was located approximately eight blocks away from 300 Bainbridge Street, involved a mother and father concerned for their son who had failed to take his

medication. After a physical altercation to restrain the son, the Respondent traveled with the mother to the hospital. The mother for this second job did ask the Respondent for identification, and the Respondent gave it to her. The Respondent testified that he did not specifically recall the statements he made to IAB, but when he made statements about driving to the hospital with Stevenson he was possibly confusing Stevenson with the mother from the subsequent job.

FINDINGS AND ANALYSIS

The Respondent is charged with failing to provide his name and shield number when requested by Cassandra Stevenson.

This Court was presented with two different versions with regards to the Respondent being asked to give Stevenson his shield number. Stevenson stated that after the Respondent brought her son, Shawn, under control she asked him for his identification because she wanted to file a complaint that he beat up her son. According to Stevenson, when she asked him for his identification the Respondent pointed to his shield on his chest and said "It's right here." She further stated that when she further told the Respondent that she could not see the number and again asked for his identification, he again stated, "It's right here."

Searles, the EMT who was at the scene, testified that Stevenson was looking at the Respondent when she asked for the shield number. Searles saw the Respondent point to his chest and he heard him say "Here's my ID." He stated that the Respondent did not try to hide his shield nor did he hear him tell Stevenson that he would not give her his name or shield number. Searles stated that this conversation took place while Stevenson

was standing by the ambulance door and the Respondent was inside the ambulance near the door.

The Respondent testified that at no point during the incident did Stevenson ask him to identify himself. He did remember that Stevenson was standing approximately 15 feet away yelling. He remembered her asking what happened to Shawn and why was he in handcuffs. At one point while Shawn was being placed into the ambulance the Respondent noticed that Stevenson was gone. The Respondent then called the dispatcher for her telephone number and when he called her she did not answer nor did she return to the scene.

What is not in dispute is the fact that the Respondent had to physically restrain a violent, emotionally disturbed male who was breaking bottles and screaming and cursing at people in the street. Without any assistance from fellow officers the Respondent brought the out-of-control Shawn to the ground. During the struggle, Shawn struck the Respondent in the head. At one point before he was able to get Shawn under control, the Respondent struck him in the head with his flashlight causing Shawn to subsequently lose consciousness.²

While this Court is mindful that an officer must "Give name and shield number to anyone requesting them" (Patrol Guide 203-09, page 1, paragraph 1), the Respondent's violent encounter with Shawn had to have some effect on his senses immediately following the encounter. This Court, therefore, finds him credible where he stated that Stevenson did not ask him to identify himself even though there was evidence presented that she did and that he pointed to his chest where his shield was and said something like "It's right here" or "Here's my ID." While this Court believes that Stevenson asked him

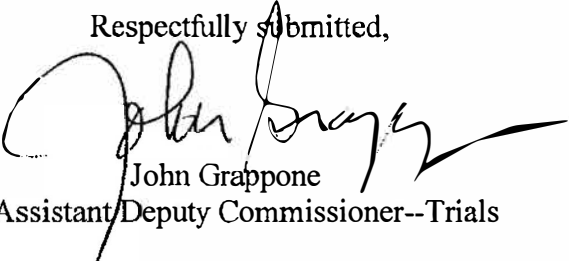
² It should be noted that the striking of Shawn was not deemed misconduct.

for identification, it is understandable that, under these circumstances, that he either did not hear her or did not remember her making the request. In addition, this Court further finds that in this case the Respondent pointing to his chest in the manner that he did was a satisfactory response, under the Patrol Guide, to Stevenson's request for his identification.


In further support of the Respondent's manner of identifying himself, this Court finds that the Respondent's actions immediately following the encounter did not show that he was trying to hide his identity. He did not try to hide his shield or immediately leave the scene; in fact he made a concerted effort to get Stevenson to return to the location by obtaining her telephone number and calling her. Moreover, the ultimate proof that he was acting responsibly was that he even rode with Shawn in the ambulance that took him to the hospital.

Based on the foregoing, the Respondent is found Not Guilty.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner--Trials

APPROVED


APR 11 2011
RAYMOND W. KELLY
POLICE COMMISSIONER